

No. 27024

**CHINA
and
JAPAN**

**Agreement concerning the encouragement and reciprocal
protection of investment (with protocol). Signed at Bei-
jing on 27 August 1988**

Authentic texts: Chinese, Japanese and English.

Registered by China on 16 January 1990.

**CHINE
et
JAPON**

**Accord relatif à l'encouragement et à la protection récipro-
que des investissements (avec protocole). Signé à Beijing
le 27 août 1988**

Textes authentiques : chinois, japonais et anglais.

Enregistré par la Chine le 16 janvier 1990.

AGREEMENT¹ BETWEEN THE PEOPLE'S REPUBLIC OF CHINA AND JAPAN CONCERNING THE ENCOURAGEMENT AND RE- CIPROCAL PROTECTION OF INVESTMENT

The Government of the People's Republic of China and the Government of Japan,

Desiring to strengthen economic cooperation between the two countries,

Intending to create favourable conditions for investment by nationals and companies of each country within the territory of the other country, by means of the favourable treatment for and the protection of investment, business activities in connection therewith and investments, and

Recognizing that the encouragement and reciprocal protection of investment will stimulate economic and technological exchanges between the two countries,

After the negotiations between the representatives of respective Governments,
Have agreed as follows:

Article 1

For the purposes of the present Agreement:

(1) The term "investments" comprises every kind of asset, used as investment by nationals or companies of one Contracting Party within the territory of the other Contracting Party in accordance with, or not in violation of the laws and regulations of the latter Contracting Party at the time of investment, including:

(a) Shares and other types of holding of companies;

(b) Claims to money or to any performance under contract having a financial value;

(c) Rights with respect to movable and immovable property;

(d) Patents of invention, rights with respect to trade marks, trade names, service marks and any other industrial property, and rights with respect to know-how; and

(e) Concession rights including those for the exploration and exploitation of natural resources.

(2) The term "returns" means the amounts yielded by an investment, in particular, profit, interest, capital gains, dividends, royalties and fees.

(3) The term "nationals" means, in relation to one Contracting Party, physical persons possessing the nationality of that Contracting Party.

(4) The term "companies" means:

(a) In relation to the People's Republic of China, enterprises, other economic organizations and associations; and

¹ Came into force on 14 May 1989, i.e., the thirtieth day following the date (14 April 1989) of the exchange of notifications confirming the completion of the required procedures, in accordance with article 15 (1).

(b) In relation to Japan, corporations, partnerships, companies and associations whether or not with limited liability, whether or not with legal personality and whether or not for pecuniary profit.

Companies constituted under the applicable laws and regulations of one Contracting Party and having their seat within its territory shall be deemed companies of that Contracting Party.

Article 2

1. Each Contracting Party shall within its territory promote as far as possible investment by nationals and companies of the other Contracting Party and admit such investment in accordance with the applicable laws and regulations of the former Contracting Party.

2. Nationals and companies of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favourable than that accorded to nationals and companies of any third country in respect of the admission of investment and the matters in connection therewith.

Article 3

1. The treatment accorded by either Contracting Party within its territory to nationals and companies of the other Contracting Party with respect to investments, returns and business activities in connection with the investment shall not be less favourable than that accorded to nationals and companies of any third country.

2. The treatment accorded by either Contracting Party within its territory to nationals and companies of the other Contracting Party with respect to investments, returns and business activities in connection with the investment shall not be less favourable than that accorded to nationals and companies of the former Contracting Party.

3. The term “business activities in connection with the investment” referred to in the provisions of the present Article includes:

(a) The maintenance of branches, agencies, offices, factories and other establishments appropriate to the conduct of business activities;

(b) The control and management of companies which they have established or acquired;

(c) The employment and discharge of specialists including technical experts, executive personnel and attorneys, and other workers;

(d) The making and performance of contracts.

Article 4

The treatment accorded by either Contracting Party within its territory to nationals and companies of the other Contracting Party with respect to access to the courts of justice and administrative tribunals and agencies both in pursuit and in defence of their rights shall not be less favourable than that accorded to nationals and companies of the former Contracting Party or to nationals and companies of any third country.

Article 5

1. Investments and returns of nationals and companies of either Contracting Party shall receive the most constant protection and security within the territory of the other Contracting Party.

2. Investments and returns of nationals and companies of either Contracting Party shall not be subjected to expropriation, nationalization or any other measures the effects of which would be similar to expropriation or nationalization, within the territory of the other Contracting Party unless such measures are taken for a public purpose and in accordance with laws and regulations, are not discriminatory, and, are taken against compensation.

3. The compensation referred to in the provisions of paragraph 2 of the present Article shall be such as to place the nationals and companies in the same financial position as that in which the nationals and companies would have been if expropriation, nationalization or any other measures the effects of which would be similar to expropriation or nationalization, referred to in the provisions of paragraph 2 of the present Article, had not been taken. Such compensation shall be paid without delay. It shall be effectively realizable and freely transferable at the exchange rate in effect on the date used for the determination of amount of compensation.

4. Nationals and companies of either Contracting Party whose investments and returns are subjected to expropriation, nationalization or any other measures the effects of which would be similar to expropriation or nationalization, shall have the right of access to the competent courts of justice and administrative tribunals and agencies of the other Contracting Party taking the measures concerning such measures and the amount of compensation in accordance with the applicable laws and regulations of such other Contracting Party.

5. The treatment accorded by either Contracting Party within its territory to nationals and companies of the other Contracting Party with respect to the matters set forth in the provisions of paragraphs 1 to 4 of the present Article shall not be less favourable than that accorded to nationals and companies of any third country.

Article 6

Nationals and companies of either Contracting Party who suffer within the territory of the other Contracting Party damages in relation to their investments, returns or business activities in connection with their investment, owing to the outbreak of hostilities or a state of national emergency, shall, in case any measure is taken by the latter Contracting Party in relation to the outbreak of such hostilities or state of such national emergency, be accorded treatment no less favourable than that accorded to nationals and companies of any third country.

Article 7

If either Contracting Party makes payment to any of its nationals or companies under a guarantee it has assumed in respect of investments and returns in the territory of the other Contracting Party, such other Contracting Party shall recognize the transfer to the former Contracting Party of any right or claim of such national or company in such investments and returns on account of which such payment is made and the subrogation of the former Contracting Party to any claim or cause of action of such national or company arising in connection therewith. As regards the transfer of payment to be made to that former Contracting Party by virtue of such

transfer of right or claim, the provisions of paragraphs 2 to 5 of Article 5 and Article 8 shall apply *mutatis mutandis*.

Article 8

1. Nationals and companies of either Contracting Party shall be guaranteed by the other Contracting Party freedom of payments, remittances, and transfers of financial instruments or funds including value of liquidation of an investment between the territories of the two Contracting Parties as well as between the territories of such other Contracting Party and of any third country.

2. The provisions of paragraph 1 of the present Article shall not preclude either Contracting Party from imposing exchange restrictions in accordance with its applicable laws and regulations.

Article 9

The present Agreement shall also apply to investments and returns of nationals and companies of either Contracting Party acquired within the territory of the other Contracting Party in accordance with the applicable laws and regulations of such other Contracting Party prior to the entering into force of the present Agreement and on or after September 29, 1972.

Article 10

The provisions of the present Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

Article 11

1. Any dispute between a national or company of either Contracting Party and the other Contracting Party with respect to investment within the territory of the latter Contracting Party shall, as far as possible, be settled amicably through consultation between the parties to the dispute.

2. If a dispute concerning the amount of compensation referred to in the provisions of paragraph 3 of Article 5 between a national or company of either Contracting Party and the other Contracting Party or other entity, charged with the obligation for making compensation under its laws and regulations, cannot be settled within six months from the date either party requested consultation for the settlement, such dispute shall, at the request of such national or company, be submitted to a conciliation board or an arbitration board, to be established with reference to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington on March 18, 1965¹ (hereinafter referred to as "the Washington Convention"). Any dispute concerning other matters between a national or company of either Contracting Party and the other Contracting Party may be submitted by mutual agreement, to a conciliation board or an arbitration board as stated above. In the event that such national or company has resorted to administrative or judicial settlement within the territory of the latter Contracting Party, such dispute shall not be submitted to arbitration.

3. The arbitration board referred to in the provisions of paragraph 2 of the present Article shall be composed of three arbitrators, with each party appointing one arbitrator within a period of sixty days from the date of receipt by either party

¹ United Nations, *Treaty Series*, vol. 575, p. 159.